



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No:4790-00
8 January 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) MILPERSMAN

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed an application with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the discharge under other than honorable conditions issued on 12 June 1987.

2. The Board, consisting of Messrs. Kastner, Taylor, and Carlson reviewed Petitioner's allegations of error and injustice on 3 January 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. The Board found that Petitioner enlisted in the Navy on 10 February 1986 for four years at age 23. At the time of his enlistment, he was a college graduate and had attained test scores indicating above average intelligence.

d. The record reflects that Petitioner was advanced to FN (E-3) and served without incident until 12 June 1986 when he received nonjudicial punishment (NJP) for being incapacitated for the proper performance of his duties as a student and failure to obey a lawful written order by possession and consumption of alcoholic beverages in the bachelor enlisted quarters (BEQ). Punishment imposed was a forfeiture of \$179 and reduction in rate to FA (E-2). Had Petitioner been tried by court-martial, either of these offenses could have resulted in a punitive discharge.

e. A medical board stated that Petitioner was admitted to the hospital on 17 October 1986 with a skull fracture with subdural hematomas and a broken arm. It was noted that on 21 September 1986, apparently while intoxicated, Petitioner fell approximately 20 feet, striking the right side of his head and his left shoulder. He was taken to a civilian hospital where he was diagnosed with a skull fracture and a broken left arm. He underwent a craniectomy on 23 September 1986 and a pin was placed in his arm on 3 October 1986. It was the opinion of the medical board that he was incapable of performing full duty, should be returned to limited duty, and reevaluated in six months.

f. The medical record reflects that on 26 March 1987 Petitioner was referred to a medical officer for an alcohol dependency evaluation and possible level II or III alcohol rehabilitation. The medical officer noted that he was currently on limited duty following the head injury, and had been admitted for detoxification in February 1987. The specific dates of his detoxification were not noted nor are they shown in available records. He was diagnosed as psychologically dependent on alcohol and recommended for level III treatment.

g. On 27 March 1987 Petitioner received a second NJP for four periods of unauthorized absence (UA) totalling about 11 days from 2-10 February, 17-19 February, 25 February, and 16-17 March 1987. Punishment imposed was a suspended reduction in rate to FR (E-1) and 30 days of extra duty. The suspended reduction in rate was vacated on 9 April 1987 due to further unspecified misconduct. Had Petitioner been tried by court-martial, none of these offenses, taken individually, could have resulted in a punitive discharge.

h. On 28 April 1987, the counseling and assistance center (CAAC) advised the command that it had interviewed Petitioner after a UA due to alcohol abuse. It noted that he had undergone four days of detoxification in January 1987. The CAAC agreed with the medical officer's prior finding of alcohol dependence and the recommendation for level III treatment, but noted that Petitioner had not agreed to meet the requirements of the program. On this same date, he went UA for six days, for which no disciplinary action was taken.

i. On 5 May 1987 Petitioner was referred for a psychiatric consult due to erratic behavior. The examining medical officer noted the head injury in September 1986 and the ensuing surgery. It was further noted that since the injury, Petitioner had developed a problem with alcohol and had been seen several times for other problems, but failed to keep follow-up and referral appointments. He was scheduled to begin level III rehabilitation on the previous day, but was UA. The family service center expressed concerns about Petitioner's erratic behavior, inability to explain his whereabouts, and his habit of appearing for appointments that were not scheduled. He was further referred for appropriate psychological and neurological evaluations.

j. On 11 May 1987, a medical board report noted a defect in Petitioner's skull and limitations in the range of motion of his left arm. The Board opined that he was still incapable of performing full duty and he should be continued on limited duty for an additional six months. It was noted that before returning to full duty, a cranioplasty would be necessary to repair the craniectomy defect. This was to be done in September 1987, a year after the accident.

i. On 13 May 1987, Petitioner was notified that he was being recommended for discharge under other than honorable conditions by reason of alcohol abuse rehabilitation failure and misconduct due to commission of a serious offense. He was advised of his procedural rights, declined to consult with legal counsel, and waived his procedural rights.

k. On 19 May 1987 a substance abuse report noted the incident of alcohol abuse which resulted in the skull fracture and placement on limited duty. Since that accident, Petitioner continued to drink, had increased his consumption, and command efforts to provide care had resulted in his refusal to assist in his own treatment.

l. On 29 May 1987 the commanding officer recommended discharge under other than honorable conditions by reason of alcohol abuse rehabilitation failure and misconduct due to commission of a serious offense. The Commander, Naval Military Personnel directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. Petitioner was then reported UA from 5-9 June 1987 for which no disciplinary action was taken. He was discharged under other than honorable conditions on 12 June 1987. However, an administrative remarks (page 13) filed in the record states Petitioner was discharged with a general discharge.

m. On 26 June 1999, the Naval Discharge Review Board (NDRB) denied Petitioner's request for an upgrade of his discharge.

n. Reference (b) authorizes the discharge of enlisted personnel by reason of misconduct due to commission of a serious offense if the specific circumstances of the offense warrant separation and if a punitive discharge would be authorized if the offense was referred to a court-martial. Normally the characterization will be under other than honorable conditions, but a general discharge may be assigned when warranted. Reference (b) also provides for separation by reason of alcohol abuse rehabilitation failure when an individual fails through inability or refusal to participate in, cooperate in, or successfully complete such a program. Characterization of service must be honorable or general, as warranted by the service record.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board specifically notes that Petitioner was processed for both misconduct due to commission of a serious offense and alcohol abuse rehabilitation failure. The Board believes separating Petitioner for misconduct due to commission of a serious offense was inappropriate since the only arguably "serious offense" occurred nearly a year prior to his being processed for discharge. Although the misconduct could have resulted in a punitive discharge, it was clear to the Board that if this misconduct warranted separation, processing would have been initiated much sooner. The Board believes that Petitioner should have been more appropriately discharged for alcohol abuse rehabilitation failure since he failed to report to level III rehabilitation treatment due to being UA, and refused or was unable to assist in his treatment. The Board noted Petitioner was undergoing medical board processing and that additional surgery was needed because of a defect noted after his skull fracture. Although, his medical problems were the result of alcohol abuse, the Board believes the discharge was unduly harsh since he was separated before the craniectomy defect could be repaired. The Board concludes that it would be appropriate and just to recharacterize the discharge to a general discharge under honorable conditions and change the reason for discharge alcohol abuse rehabilitation failure.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing he was separated with a general discharge on 12 June 1987 by reason of "Alcohol Abuse Rehabilitation Failure" vice under other than honorable conditions by reason of misconduct due to commission of a serious offense.

b. That a copy of the Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 11 July 2000.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director